

Message Text

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ORIGIN EB-07

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CAB - MR. LITTON (SUBS)

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

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E.O. 11652: N/A

TAGS: EAIR, PE

SUBJECT: CIVAIR - AERO PERU ALL-CARGO FLIGHTS

REF: LIMA 7814

1. FYI: OUR RECORDS OF NEGOTIATIONS LEADING TO JULY 7 UNDERSTANDING SHOW THAT USDEL RAISED QUESTION OF AERONAVES AND FAUCETT'S OPERATIONS AT MEETING ON JUNE 23 (SEE ATA MINUTES), NOTING THAT THESE OPERATIONS WOULD NOT BE COVERED BY UNDERSTANDING AS DRAFTED. BERCKEMEYER HOWEVER DID NOT CATCH THE POINT OR DID NOT CARE. IN ANY EVENT, THE LANGUAGE OF THE EXCHANGE OF NOTES MAKES IT ABUNDANTLY CLEAR TO US THAT THE UNDERSTANDING "GOVERNS THE CONDUCT OF EACH GOVERNMENT WITH RESPECT TO SCHEDULED PASSENGER, CARGO, AND MAIL AIR SERVICES OF THE AIRLINES WHICH WERE DESIGNATED" PURSUANT TO THE AIR TRANSPORT AGREEMENT, I.E., BRANIFF, AERO PERU, AERONAVES AND FAUCETT. SINCE THE UNDER-
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STANDING ITSELF ASSIGNS FREQUENCIES ONLY TO BRANIFF AND

AERO PERU, AERONAVES AND FAUCETT ARE TECHNICALLY IN A STATE OF LIMBO.

2. AS FOR AERO PERU'S ALL-CARGO OPERATIONS, USG WOULD HAVE TO MAINTAIN THAT THE UNDERSTANDING INCLUDES ALL-CARGO FREQUENCIES. THE WORDS "PASSENGER, CARGO, AND MAIL" CANNOT

REFER ONLY TO COMBINATION SERVICES. THIS ISSUE WAS SETTLED IN A US-ITALY ARBITRATION IN WHICH THE TRIBUNAL RULED THAT THESE WORDS ENCOMPASSED BOTH COMBINATION SERVICES AND SERVICES CARRYING CARGO ONLY. INDEED, GOP HAS SHOWN BY ITS PAST ACTIONS THAT IT ACCEPTS THIS INTERPRETATION SINCE AERONAVES AND FAUCETT WERE DESIGNATED BY GOP UNDER AIR TRANSPORT AGREEMENT. END FYI.

3. DEPT APPRECIATES THAT LEGAL ARGUMENTS ARE NOT GOING TO SWAY GOP IF IT IS DETERMINED TO PRESS MATTER. ACCORDINGLY EMBASSY SHOULD INFORM BERCKEMEYER THAT WE ARE WILLING TO AGREE TO AERO PERU'S ALL-CARGO FLIGHTS WITHOUT REFERENCE TO THE FREQUENCY LIMITATIONS CONTAINED IN THE JULY 7 UNDERSTANDING PROVIDED APPROPRIATE RECIPROCAL ARRANGEMENTS CAN BE WORKED OUT. EMBASSY SHOULD DRAW ON PARA 4 BELOW IN DISCUSSING ISSUE WITH GOP AND SHOULD AVOID USING ARGUMENTATION CONTAINED PARA 1 AND 2 ABOVE.

4. EMBASSY MAY INFORM PERUVIANS THAT THE DEPT APPRECIATES THE DEEP CONCERN WITH WHICH GOP VIEWS THE ISSUE OF ALL-CARGO FLIGHTS FOR AERO PERU. ACCORDINGLY, IN THE INTEREST OF CONTINUING THE COOPERATION AND MUTUAL UNDERSTANDING WHICH HAS BEEN EXHIBITED BY OUR RESPECTIVE DELEGATIONS IN REACHING THE RECENT AGREEMENT ON CIVIL AVIATION, THE U.S. IS PREPARED TO AGREE TO TWO ALL-CARGO FREQUENCIES FOR AERO PERU PROVIDED SUITABLE RECIPROCAL ARRANGEMENTS CAN BE WORKED OUT. SUCH ALL-CARGO FLIGHTS WOULD NOT BE COUNTED AGAINST THE FREQUENCY LIMITATIONS CONTAINED IN THE UNDERSTANDING OF JULY 7. EMBASSY SHOULD POINT OUT THAT NEW AERO PERU PERMIT MAY WELL LIST THE FREQUENCY LIMITATIONS CONTAINED IN THE UNDERSTANDING. HOWEVER, PERMIT WOULD ALSO CONTAIN PROVISION ENABLING CAB TO AUTHORIZE ADDITIONAL FREQUENCIES ON BASIS OF RECIPROCITY AND THIS WOULD LIMITED OFFICIAL USE

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PROVIDE BASIS FOR PROMPTLY AUTHORIZING AERO PERU'S ALL-CARGO FLIGHTS ONCE RECIPROCAL ARRANGEMENTS ARE WORKED OUT.

5. FYI: WE ARE NOT YET IN POSITION TO INDICATE WHAT RECIPROCAL ARRANGEMENTS ARE CONTEMPLATED IN RETURN FOR TWO AERO PERU ALL-CARGO FREQUENCIES. BRANIFF HAS NO PLANS TO IMPLEMENT ITS OWN ALL-CARGO FLIGHTS TO PERU AT THIS TIME. END FYI. INGERSOLL

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